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REPORT
101-214

MINNESOTA PUBLIC LANDS IMPROVEMENT ACT OF 1989

NOVEMBER 19, 1989 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2783]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 2783) to improve the management of certain public lands in the State of Minnesota, having considered the same, reports favorably thereon with an amendment and recommends that the act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minnesota Public Lands Improvement Act of 1989".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress hereby finds and declares that—

(1) within the State of Minnesota there are a number of small scattered islands and upland tracts that are in Federal ownership and under the jurisdiction of the Bureau of Land Management;

(2) the public interest would be best served if these Federal islands and upland tracts continue to be managed for public recreation; preservation of open space; and for the protection of their fish, wildlife, and plants and their scientific, historic, cultural, geologic, and other resources and values;

(3) many such islands and upland tracts are not suitable for inclusion in the National Park System, National Forest System, National Wildlife Refuge System, or other Federal conservation system or for efficient managment by the Bureau of Land Management;

(4) the State of Minnesota is prepared and willing to undertake to manage such islands and upland tracts for such purposes and subject to appropriate conditions, but existing mechanisms for enabling the State to undertake such management are cumbersome and inefficient as applied to such small, scattered islands and tracts;

(5) elsewhere in Minnesota there are unpatented lands which for many years have been in the possession of parties other than the United States but the title

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to which is clouded because of claims arising under public land laws or otherwise involving possible Federal residual interests;

(6) existing authorities for Federal resolution of such conflicts, and for removal of such clouds on title, are often not well suited for efficient, expeditious action that appropriately protects the interests of all parties, including the United States; and

(7) legislation to facilitate appropriate management by the State of Minnesota of such islands and upland tracts and to facilitate resolution of such claims and removal of such clouds would be in the public interest.

(b) PURPOSES.—This Act is intended to provide for better management of public lands located in the State of Minnesota by—

(1) transferring certain specified unclaimed islands and uplands and certain other public lands to such State for purposes of public recreation, protection of fish, wildlife, and plants, and the protection of resources and values; and

(2) authorizing the Secretary of the Interior to resolve claims to certain other public lands in Minnesota and to transfer such lands to claimants thereof on terms that recognize the equities of such claimants in such lands.

SEC. 3. DEFINITIONS.

As used in this Act—

(a) the term "listed uplands and islands" means those public lands located in the State of Minnesota which are specified in the list containing the legal description of such lands and entitled "Minnesota Uplands and Islands Appropriate for State Management" dated November 1989, on file in the Office of the Secretary of the Interior, except for any lands to which Indian title has not been extinguished;

(b) the term "public lands" means Federally owned lands of interests therein administered by the Bureau of Land Management;

(c) the term "claim" means a good faith assertion by a party other than the United States that—

(1) such party has title to parcel or tract of land, or

(2) the parcel or tract of land is held in trust by the United States for the benefit of an Indian tribe or an individual member of an Indian tribe;

(d) the term "Recreation and Public Purposes Act" means the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.);

(e) the term "Secretary" means the Secretary of the Interior; and

(f) the term "State" means the State of Minnesota.

SEC. 4. GRANT TO STATE.

(a) UNCLAIMED AREAS.—Effective one year after the date of enactment of this Act and subject to its terms and conditions, the right, title and interest of the United States in and to all listed uplands and islands, surveyed and unsurveyed, in Lake Superior, inland lakes and rivers, and other bodies of water within the State which as of one hundred and eighty days after the date of enactment of this Act were not subject to any claim identified on the records of, or filed with the Bureau of Land Management, are hereby granted to the State.

(b) CLAIMED AREAS.—Any listed uplands and islands which were subject to claim identified on the records of, or filed with the Bureau of Land Management as of one hundered and eighty days after the date of enactment of this Act, may be sold by the Secretary to the claimant or claimants thereof under section 5 of this Act. No later than one year after the date of enactment of this Act, the Secretary shall notify such claimant or claimants concerning the Secretary's authority for such sales. The right, title, and interest of the United States in and to any such listed uplands and islands not purchased by such claimant or claimants within ten years after the date of enactment of this Act shall be transferred by the Secretary to the State under and subject to this Act at the end of such ten years, and any claim to any such listed uplands and islands by any party other than the State shall not thereafter be enforceable in any court of the United States, subject to the following exceptions:

(1) The ten year period shall be tolled during pendency of any admininstrative appellate review of a decision by the Bureau of Land Management or of any judicial review of a final decision by the Secretary; and

(2) The Secretary may transfer lands to the State earlier than ten years if a claim for said lands has been rejected or disallowed for any reason, or forfeited by the claimant.

(c) PRIOR TRANSFERS.—(1) Title to the surface estate in all public land which on the date of enactment of this Act was subject to leases issued under the authority of the Recreation and Public Purposes Act to the State, its departments, agencies, and

bureaus, shall be deemed to have been granted to and vested in the State under this Act on such date and shall thereafter be exempt from the requirements of the regulations of the Department of the Interior governing leases under the Recreation and Public Purposes Act, but shall be subject to the provisions of this Act.

(2) Upon reversion and acceptance of public land in Minnesota which prior to the date of enactment of this Act was leased or patented under the Recreation and Public Purposes Act to entities other than the State, its departments, agencies and bureaus, and upon request of the State, the surface estate in such lands shall be transferred by the Secretary to the State pursuant to and subject to the provisions of this Act.

(3) If, in order to bring lands under the provisions of this Act, the State notifies the Secretary that the State desires to relinquish to the United States the right, title, and interest of the State in and to any lands which prior to the date of enactment of this Act were patented to the State (or to any department, agency, or bureau of the State) under the authority of the Recreation and Public Purposes Act, the Secretary shall accept such relinquishment and shall transfer such lands to the State under and subject to the provisions of this Act. Such transfer shall be effective at the same time that the State's relinquishment is effective.

SEC. 5. RESOLUTION OF CLAIMS.

(a) SALES.—In accordance with the provisions of this section, the Secretary is authorized to sell and issue a patent to a tract of public land located in Minnesota to an applicant for such sale where the Secretary determines that—

(1) such tract does not exceed 1,500 acres and, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency, and

(2) such sale would not be inconsistent with land use plans, if any, developed in accordance with section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

(b) PRICE ADJUSTMENTS.—Notwithstanding any other provision of law, following adjudication of any claims the Secretary may, at the Secretary's discretion, convey land pursuant to this section at fair market value, less equities presented by an applicant for such conveyance and less the value of any improvements that the applicant or the applicant's predecessors in interest have placed on the land. Such equities may include (but are not limited to)—

(1) the amount paid for the land by the applicant;

(2) longevity of applicant's claim;

(3) taxes paid on the land; and

(4) other equities as the Secretary may determine relevant.

(c) DESCRIPTIONS.—Any tract of public land conveyed pursuant to this section shall be described in accordance with the Public Land Survey System as reflected on the approved Federal plat of survey. Where a tract does not conform to an existing survey plat, the Secretary may either—

(1) convey title to a trustee, qualified under the laws of the State to act as a trustee and acceptable to the Secretary, acting on behalf of more than one applicant to whom such trustee shall be required to transfer such tract, in order to conform the legal description to such plat; or

(2) require an applicant to reimburse the United States for the cost of preparing a plat of survey. No cost incurred by a trustee in implementing this subsection shall be borne by the United States.

(d) APPLICABILITY AND PROCEDURE.—(1) This section shall apply only to tracts specified in subsection 4(b) of this Act, and only if the Secretary has determined such claims to be sufficiently meritorious as to be appropriate for exercise of the Secretary's discretionary authority under this section.

(2) No sale under this section shall take place before thirty days after the Secretary has published in a newspaper of general circulation in the county where a tract proposed for sale is located a notice of the Secretary's determination that such tract is eligible for sale under this section and that the Secretary intends to offer such tract for sale. Such notice shall indicate the size and general location of the tract and the name or names of the claimant or claimants to whom the Secretary intends to sell such tract.

SEC. 6. RESERVATIONS AND CONDITIONS.

(a) MINERAL RESERVATION.—All lands granted by, and any patent or document of conveyance or other transfer issued pursuant to, this Act shall be subject to the reservation to the United States of all minerals in the lands granted, conveyed, or otherwise tranferred, together with the right to prospect for, mine and remove the min-

erals under applicable law and such regulations as the Secretary may prescribe, except that in the case of sales under section 5 of this Act the Secretary may convey the minerals together with the surface in accordance with section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(b) OTHER CONDITIONS.—(1) The lands granted or otherwise transferred to the State under this Act shall not be conveyed or otherwise transferred by the State to any person or entity other than the United States or a political subdivision of the State.

(2) The lands granted or otherwise transferred to the State under this Act shall be used only for purposes of—

(A) public recreation;

(B) protection of fish and wildlife (including habitat) and plants; or

(C) the protection of the scenic, scientific, historic, cultural, geologic, and other resources and values of such lands.

(3)(A) If the State attempts to convey or otherwise transfer title to any part of the lands granted or otherwise transferred to the State under this Act to any person or entity other than the United States or a political subdivision of the State, all right, title, and interest in and to all such lands so granted or otherwise transferred to the State, together with all improvements thereon, shall revert to the United States.

(B) If any political subdivision of the State attempts to convey or otherwise transfer title to any part of any lands granted or otherwise transferred to the State under this Act (and conveyed or otherwise transferred to such subdivision by the State) to any person or entity other than the State, all right, title, and interest in and to all such lands so conveyed or otherwise transferred to such subdivision, together with all improvements thereon, shall revert to the United States.

(4)(A) If any part of the lands granted or otherwise transferred to the State under this Act (and not further conveyed or otherwise transferred by the State to a political subdivision thereof) are used for any purpose incompatible with the purposes specified in paragraph (2) of this subsection, all right, title, and interest in and to all such lands in the ownership of the State, together with all improvements thereon, shall revert to the United States.

(B) If any of the lands granted or otherwise transferred to the State under this Act are conveyed or otherwise transferred by the State to a political subdivision of the State, use of part of any such lands for any purpose incompatible with the purposes specified in paragraph (2) of this subsection, shall cause all right, title, and interest in and to all such lands so conveyed or otherwise transferred to such political subdivision, together with all improvements thereon, to revert to the United States.

(5)(A) If any land, or portion thereof, granted or otherwise conveyed to the State or political subdivision of the State shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601), or if such land, or portion thereof, has been used for purposes that the Secretary finds may result in the disposal, placement or release of any hazardous substance, such land shall not, under any circumstances, revert to the United States.

(B) In the event lands granted or conveyed to the State or political subdivision of the State shall be used for purposes that the Secretary finds: (1) inconsistent with the purposes of this Act, and (2) which may result in the disposal, placement or release of any hazardous substance, the State or political subdivision of the State shall be liable to pay to the Secretary, on behalf of the United States, the fair market value of the land, including the value of any improvements thereon, as of the date of conversion of the land to the nonconforming purpose. All amounts received by the Secretary pursuant to this subparagraph shall be retained by the Secretary and used, subject to appropriations, for the management of public lands and shall remain available until expended.

SEC. 7. NOTICE AND ENFORCEMENT.

(a) PUBLIC NOTICE.—(1) As soon as practicable after the date of enactment of this Act, the Secretary, in consultation with appropriate officials of the State, shall take steps to notify residents of the State as to the nature and location of the listed uplands and islands to be granted or otherwise transferred to the State under this Act.

(2)(A) The State, or a political subdivision thereof, shall provide notice in writing to the Secretary with regard to any conveyance or other transfer by the State to a political subdivision thereof of any of the lands granted or otherwise transferred to the State under this Act. In the event that such notice is not received within one year after any such conveyance or transfer, such conveyance or transfer by the State shall be void ab initio and all right, title, and interest in and to the land covered by such attempted conveyance or transfer shall revert to the United States.

(B) No later than five years after the date of enactment of this Act, and every five years thereafter, the State shall submit to the Secretary a report as to the present ownership, management, and use of the lands granted or otherwise transferred to the State pursuant to this Act.

(3) The Secretary shall maintain in the appropriate office of the Bureau of Land Management a current listing of the lands granted or otherwise transferred to the State under this Act, including a record of which, if any, of such lands have been conveyed or otherwise transferred by the State to a political subdivision thereof.

(b) ENFORCEMENT.—(1) Any person may submit to the Secretary a complaint alleging that the State or a political subdivision thereof has failed to comply with the requirements of this Act or that actions have occurred which have had the effect of causing the reversion to the United States of some or all of the lands granted or otherwise transferred to the State under this Act.

(2) In the event that the Secretary determines that a complaint received under this subsection is supported by evidence sufficient to warrant further investigation, the Secretary shall investigate the matter.

(3) If, as a result of an investigation under paragraph (2) of for any other reason, the Secretary determines that title to some or all of the lands granted or otherwise transferred to the State under this Act has reverted to the United States pursuant to this Act, the Secretary shall take all necessary steps to enforce such reversion and to stop use of any part of such lands for any purpose incompatible with the purposes specified in subsection 6(b)(2) of this Act.

(4) Any lands which may revert to the United States under this Act shall be retained and managed by the Secretary for the purposes specified in subsection 6(b)(2) of this Act.

SEC. 8. HUNTING AND FISHING.

Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Minnesota with respect to fish and wildlife (including the regulation of hunting, fishing, and trapping) in any lands granted or otherwise transferred to the State under this Act.

SEC. 9. CONFORMING AMENDMENT.

(a) Subsection 3(d) of the Michigan Public Lands Improvement Act of 1988 (Public Law 100–537) is hereby amended by striking the period at the end of paragraph (1) of such subsection and by inserting in lieu thereof, ", and only if the Secretary has determined such claims to be sufficiently meritorious as to be appropriate for exercise of the Secretary's discretionary authority under this section.".

(b) Subsection 4(b) of the Michigan Public Lands Improvement Act of 1988 (Public Law 100–537) is amended—

(1) by inserting "the United States or" after "any person or entity other than" in paragraph (1); and

(2) by inserting "the United States or" after "any person or entity other than" in subparagraph (3)(A).

SEC. 10. LICENSING OF URANIUM ENRICHMENT FACILITIES.

The Atomic Energy Act of 1954, as amended, is further amended:

(a) By adding before the period at the end of the definition of the term "production facility" in section 11v. a colon and the following: "*Provided, however,* That as the term is used in chapters 10 and 16 of this Act, other than with respect to export or a uranium enrichment production facility, it shall not include any equipment or device, or important component part especially designed therefor, capable of separating the isotopes of uranium or enriching uranium in the isotope 235";

(b) By striking the period at the end of section 161b. and adding the following: "; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership or possession of any equipment or device, or important component part especially designed therefor, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;";

(c) By striking the phrase "section 103 or 104" in section 41a. (2) and inserting in lieu thereof "this title"; and

(d) In section 236 by striking the word "or" following paragraph (2) and adding after paragraph (3) "or (4) any uranium enrichment facility licensed by the Commission";

(e) In section 274c. by adding the following before the semicolon at the end of subparagraph (1) the following: "or any uranium enrichment facility".

Purpose of the Measure

The purpose of H.R. 2783, as ordered reported, is to provide for the transfer of certain Federal lands (mostly small islands) to the State of Minnesota, to be managed for purposes of public recreation and the protection of their natural resources.

Background and Need

Located within Minnesota are almost 1,000 small islands and uplands, ranging in size from 75 acres to as small as a tenth-of-an-acre. The majority of these lands are small islands located in lakes in the central and northwestern part of the State. These lands, which total approximately 9,500 acres, are federally owned and managed by the Bureau of Land Management (BLM). Many of these islands were omitted during original land surveys. As a result, these lands have remained in Federal ownership.

In 1982, BLM declared these lands surplus and offered them to the State of Minnesota pursuant to the Recreation and Public Purposes Act of 1926 (R&PP) In the last 7 years, only 49 of the parcels have been transferred to the State pursuant to that Act. Because of the large number of separate tracts of land, many of them unsurveyed, the Minnesota Department of Natural Resources and the BLM have determined that using the R&PP to transfer these parcels is not feasible.

Of the 992 parcels, approximately 850 totaling 7,800 acres are currently cleared of any title conflicts and are ready for immediate transfer to the State of Minnesota. The remaining 144 parcels, totaling approximately 1,745 acres are believed to be encumbered by claims of title.

This legislation is similar to legislation enacted last Congress, Public Law 100–537, which dealt with the disposal of public lands in Michigan.

Legislative History

H.R. 2783 was introduced by Representative Vento on June 28, 1989, and passed the House by a voice vote on August 3, 1989. The Subcommittee on Public Lands, National Parks and Forests held a hearing on this measure on September 12, 1989.

At the business meeting on November 15, 1989, the Senate Committee on Energy and Natural Resources ordered H.R. 2783, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on November 15, 1989, by unanimous vote of a quorum present, recommends that the Senate pass H.R. 2783, if amended as described herein.

The roll call vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	

Mr. Ford
Mr. Metzenbaum
Mr. Bradley*
Mr. Bingaman*
Mr. Wirth*
Mr. Conrad
Mr. Heflin
Mr. Rockefeller*
Mr. McClure
Mr. Hatfield *
Mr. Domenici
Mr. Wallop
Mr. Murkowski*
Mr. Nickles*
Mr. Burns
Mr. Garn*
Mr. McConnell

* Indicates vote by proxy.

Committee Amendments

The Committee adopted an amendment in the nature of a substitute which addresses concerns primarily raised by the Administration relating to the process by which lands are to be transferred from the Federal Government to the State of Minnesota and also makes numerous technical or clarifying changes. The substitute also includes provisions pertaining to licensing of uranium enrichment facilities.

The substantive changes to the bill made by the substitute include the following:

DEFINITION OF LANDS AND CLAIMS

The substitute modifies the definition of the term "listed upland and islands" to address concerns about the ability of potentially affected Indian tribes to determine if lands in which a tribe has a claim are proposed to be transferred to the State. First, the modified definition excludes from those lands to be transferred to the State "all lands to which Indian title has not been extinguished." Second, the amendment requires that the list of lands to be transferred contain the legal descriptions of such lands. The Committee is aware that many of the parcels proposed for transfer under this Act are unsurveyed and therefore do not have complete legal descriptions. The Committee intends that in the case of such unsurveyed parcels, the Bureau of Land Management will describe such parcels with enough geographical specificity to enable outside parties to determine the precise location of such parcels.

The substitute modifies the term "claim" to require that all claims be made in good faith. This is consistent with other Federal land sale provisions, such as the Color-of-Title Act. The substitute also modifies the term to include, in addition to a claim of title, a claim that land to be conveyed is held in trust by the United States for the benefit of an Indian tribe or an individual member of an Indian tribe.

TIME PERIODS

The amendment extends the period that claims may be filed to 6 months after the date of enactment of this Act, to allow reasonable time for parties to examine the list of uplands and islands. In addition, the date of conveyance of lands from the Federal Government to the State is extended by an additional 6 months, so that conveyance is to take place 1 year after the date of enactment of this Act.

H.R. 2783, as passed the House, provided that if a claimant did not purchase the land to which the claims was filed within 10 years, such land would be transferred to the State. The substitute, as amended, modifies the10-year period to provide that during the pendency of any administrative appellate review or a judicial review of a final decision of the Secretary, the 10-year period is tolled. Conversely, if claims are rejected, then those lands may be transferred to the State prior to the end of the 10-year period.

LIMITATION ON LAND SALES

The substitute provides that only lands on the BLM list identified in subsection 3(a) may be sold by the Secretary to a claimant. This amendment deleted a provision in the House bill which would have allowed the Secretary to sell any tract of public land in Minnesota to a person with a claim to such tract, upon the request of such claimant.

HAZARDOUS WASTE RESTRICTION

Paragraph 6(b)(5) of the substitute states that if land transferred to the State or a political subdivision of the State becomes contaminated with hazardous substance, or if the land has been used for purposes that the Secretary finds may result in the disposal or release of any hazardous substance, such land shall not, in any circumstance, revert to the United States. The Committee notes that the provisions of this paragraph are consistent with Public Law 100-648, the Recreation and Public Purposes Amendment Act of 1988.

LICENSING OF URANIUM ENRICHMENT FACILITIES

The substitute includes a provision which authorizes the Nuclear Regulatory Commission (NRC) to license uranium enrichment facilities under procedures which have been applied to facilities that process uranium hexaflouride, rather than under procedures for licensing production facilities.

A uranium enrichment facility is currently considered a "production facility" under the Atomic Energy Act of 1954, as amended. Under the Atomic Energy Act and the regulations of the NRC, production facilities are licensed under the procedures developed for licensing nuclear power reactors (10 C.F.R. part 50). Enrichment plants, however, pose risks which are generally different than those related to nuclear powerplant operations.

The Committee recognizes however, that unlike a nuclear power plant, an enrichment plant is similar to a uranium processing plant in terms of safety hazards. The NRC currently licenses facilities which process uranium hexflouride under 10 C.F.R. parts 40

and 70. Uranium hexaflouride is the principal chemical form of uranium used in the enrichment process. The NRC agrees that it would be more appropriate to regulate uranium enrichment plants under 10 C.F.R. parts 40 and 70 than under 10 C.F.R. part 50.

The Committee adopted this language to ensure that any privately-owned uranium enrichment plants that will be built and operated in the United States will be considered for licensing by the NRC under criteria and procedures that are appropriate for that type of facility. The Committee is aware that a private uranium enrichment venture is being planned for Louisiana.

Section-by-Section Analysis

Section 1 entitles the Act the "Minnesota Public Lands Improvement Act of 1989".

Section 2 contains the Congressional findings and purposes. The purpose of the legislation is to provide for better management of public lands located in the State of Minnesota by transferring unclaimed parcels to the State and by resolving claims to the remaining public lands.

Section 3 defines certain terms used in the Act.

Section 4 sets forth the procedure for granting the lands identified on the list defined in subsection 3(a) to the State of Minnesota.

Subsection (a) provides that 1 year after the date of enactment of the Act, all unclaimed uplands and islands are to be transferred to the State. There are 848 such unclaimed tracts totaling approximately 7,800 acres. Only the surface estate is to be transferred to the State; subsection 6(a) reserves all mineral rights to the United States.

Subsection (b) provides for the disposition of lands to which a claim is on record with BLM, or will be filed with BLM within 180 days after the date of enactment of this Act. The subsection states that claimed lands may be sold by the Secretary to the claimant in accordance with the provisions of section 5.

If the claimant does not purchase the tract within 10 years after the date of enactment of this Act, such lands are to be transferred by the Secretary of State. The 10-year period is to be tolled during the pendency of any administrative appellate review or of any judicial review of a final decision by the Secretary. Paragraph (2) provides that the Secretary may transfer lands to the State earlier than 10 years if a claim has been rejected or disallowed.

Section 5 deals with the resolution of claims to lands proposed to be transferred.

Subsection (a) authorizes the Secretary to sell and issue a patent to a tract of land where the size of the tract does not exceed 1,500 acres and continued management by the Federal Government would be difficult and uneconomic.

Subsection (b) provides that the Secretary may, at the secretary's discretion, sell land pursuant to this section for fair market value, taking into account equitable considerations.

Subsection (c) states tha public lands conveyed pursuant to this section shall be described in accordance with the Public Land Survey Systems reflected on an approved Federal survey plat. The subsection provides that where a tract does not conform to an ex-

isting survey plat, the Secretary may either convey title to a trustee acting on behalf of more than one applicant, or to require the applicant to reimburse the United States for the cost of preparing a plat of survey.

Subsection (d)(1) limits this sale authority only to those listed uplands and islands which were subject to a claim pursuant to subsection 4(b), and only if such claims are determined by the Secretary to be sufficiently meritorious as to be appropriate for the exercise of the Secretary's discretionary authority to sell.

Paragraph (2) provides that no sale of a tract shall take place until 30 days after the Secretary has published a notice in a newspaper of general circulation that the Secretary intends to offer such tract for sale.

Section 6 contains reservations and conditions on lands to be conveyed.

Subsection (a) reserves all mineral rights to the United States for any lands transferred pursuant to this Act, except for sales to claimants under section 5.

Subsection (b) sets forth other conditions limiting the use and conveyance of lands transferred to the State pursuant to this Act. Paragraph (1) states that no lands may be transferred by the State to any entity other that the United States or a political subdivision of the State. Paragraph (2) provides that lands transferred to the State may only be used for the purposes of public recreation, fish and wildlife protection or protection of scenic, scientific, historic, cultural, geologic or other resources and values of the lands.

Paragraphs (3) and (4) provide that if the State attempts to transfer any land conveyed to it under this Act to any person or entity other than a political subdivision of the State or the United States, or if a parcel of land conveyed is used for any purpose which is incompatible with the purposes set forth in paragraph (2), the parcel, and any improvements, shall revert back to the United States.

Paragraph (5) states that if any land conveyed to the State or a political subdivision of the State becomes contaminated with hazardous substances, such land shall not revert back to the United States. This paragraph is consistent with language enacted last year in Public Law 100-648, the Recreation and Public Purposes Amendment Act of 1988.

Section 7 details the notice and enforcement provisions of the Act.

Subsection (a)(1) provides that the Secretary is to provide public notice to the residents of the State, as soon as practicable after the date of enactment of this Act, concerning the nature and location of the listed uplands to be transferred to the State.

Paragraph (2) requires the State, or a political subdivision thereof, to provide notice to the Secretary concerning a transfer by the State to a political subdivision of lands received pursuant to this Act. Failure by the State or political subdivision to provide such notice within 1 year after any such conveyance voids the transfer and causes the land to revert back to the United States. The paragraph also provides that the State is to submit a report to the Secreary every 5 years as to the present ownership, management and use of lands transferred to the State by this Act.

Paragraph (3) directs the Secretary to maintain a current listing of lands transferred to the State by this Act in the appropriate office of the BLM.

Subsection (b) contains enforcement provisions. Paragraph (1) provides that any person may submit a complaint to the Secretary alleging that the State or a political subdivision of the State has failed to comply with the requirements of the Act, or that actions have occurred which would cause the lands to revert back to the United States.

Paragraph (2) requires that the Secretary investigate a matter if the Secretary determines that there is sufficient evidence to warrant further investigation.

Paragraph (3) provides that the Secretary shall take all necessary steps to enforce a reversion if he determmines that such a reversion should have occurred.

Paragraph (4) states that any lands which revert back to the United States are to be managed by the Secretary for the purposes specified in subsection 6(b)(2) of this Act.

Section 8 states that nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State with respect to fish and wildlife for any lands transferred to the State pursuant to this Act.

Section 9 amends Public Law 100-537, the Michigan Public Lands Improvement Act of 1988, to make conforming changes consistent with language used in this Act.

Section 10 concerns the licensing of uranium enrichment facilities.

Subsection (a) provides that, except for purposes of export, enrichment facilities and related equipment shall not be considered production or utilization facilities under the Atomic Energy Act of 1954, as amended. This provision ensures that the procedures and criteria of 10 C.F.R. parts 40 and 70, related to materials handling licenses for the use of source or special nuclear material are used for licensing uranium enrichment facilities.

However, materials handling licenses under parts 40 and 70 do not apply to or regulate enrichment facilities until they perform enrichment and thus create source or special nuclear materials. Nevertheless, it is important from the standpoint of the common defense and security to monitor all facilities that may be capable of enriching uranium, as well as those that have actually performed enrichment. Thus, subsection (b) requires the Nuclear Regulatory Commission to promulgate regulations for the purposes of regulating the control, ownership and possession of new uranium enrichment facilities.

Subsection (c) makes conforming changes to the Atomic Energy Act for purposes of clarifying that private ownership of enrichment facilities is permitted. Subsection (d) provides criminal penalties for the sabotage of licensed enrichment facilities. Finally, subsection (e) provides that uranium enrichment facilities will be regulated solely by the NRC. Without subsection (e), licensees under parts 40 and 70 may be subject to dual regulation by the NRC and a State where that State has entered an agreement with the NRC for the regulation of source material. This section insures that there will not be dual regulation and recognizes the potential importance of

uranium enrichment facilities to the Nation's common defense and security.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2783. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2783, as reported.

Executive Communications

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to H.R. 2783 and views of NRC relating to licensing of uranium enrichment facilities are set forth below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, DC, September 11, 1989.

Hon. J. Bennett Johnston,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: This is in response to your request for our views on H.R. 2783, an Act "To improve the management of certain public lands in the State of Minnesota."

We support enactment of H.R. 2783, only if amended as we suggest herein.

This Act would be cited as the "Minnesota Public Lands Improvement Act of 1989." Sections 1 (b) and (c) set out the findings of Congress and the purposes of the Act. Section 1(d) would define several terms used in this Act, including the term "listed uplands and islands." The Act would apply to listed uplands and islands in the State of Minnesota except for any lands ceded to the United States by an Indian tribe by the Act of January 14, 1989. Sedction 2(a) of H.R. 2783 would grant to the State of Minnesota the surface estate in certain listed islands and uplands which are not subject to any claim.

Section 2(b) would authorized the Secretary of the Interior (Secretary) to sell any listed public lands, which were subject to claims on January 1, 1989, to those claimants. Those tracts not purchased

by claimants within 10 years of enactment of H.R. 2783 would be transferred by the Secretary to the State, and any claim to those islands by any party other than the State would not be enforceable in any court of the United States.

Under section 2(c), the surface estate held by the State under existing Recreation and Public Pruposes Act (R&PP) lease would be deemed to have vested in the State on the date of enactment of H.R. 2783. Thereafter, these lands would be exempt from the Department of the Interior's regulations governing such leases. Rather, they would be subject to the restrictions used in H.R. 2783. Further, in the event of revision and acceptance by the Federal Government of public land leased or patented under the R&PP Act or patented prior to the enactment of H.R. 2783, the surface estate would be required to be transferred by the Secretary to the State. These lands would then be subject to the provisions of H.R. 2783.

Under section 3, the Secretary would be authorized to sell claimed public lands located in Minnesota where the Secretary determines that such tract does not exceed 1,500 acres, management of the tract is difficult and uneconomic as part of the public lands, the lands are not suitable for management by another Federal department or agency, and the sale would not be inconsistent with land use plans developed in accordance with the Federal Land Policy and Management Act (FLPMA). Section 3(b) would permit the Secretary, at his discretion, to sell such public land at fair market value, less equities presented by the applicant for such conveyance and the value of any improvements. Section 3(c) would require lands be described in accordance with the Public Land Survey System. Where a tract does not conform to an existing survey plat, the Secretary could either permit a transfer of such lands to a trustee, qualified under the law of the State to act as a trustee and acceptable to the Secretary, or require reimbursement from applicants for survey costs. No costs incurred by a trustee in implementing this section would be borne by the United States. Pursuant to section 3(d)(2), no sales could take place sooner than 30 days after publication in a newspaper of general circulation in the county where the tract is located.

Section 4 would reserve to the United States all minerals in lands conveyed under H.R. 2783, except that on sales allowed by section 3, minerals could be conveyed together with the surface in accordance with section 209 of FLPMA. Section 4(b) would prohibit reconveyance by the State of any listed islands or uplands except to the United States or a political subdivision of the State. This section would require that lands conveyed to the State pursuant to this Act be used only for public recreation; protection of fish and wildlife, including habitat, and plants; or the protection of the scenic, scientific, historic, cultural, geologic and other resources of the uplands and islands. For violations of these provisions, the lands would revert to the United States.

Section 5(a) would require the Secretary to notify Minnesota residents of the nature and location of the listed tracts to be granted or transferred to the State. The State would be required to notify the Secretary within one year of any conveyance or transfer to a political subdividion of the State of lands transferred to the State under this Act. Failure to the State to notify the Secretary within

one year of such conveyance would result in the conveyance being void ab initio and the land reverting to the United States. No later than five years after enactment of the Act, and every five years thereafter, the State would be required to submit to the Secretary a report on ownership, management, and use of the transferred lands.

Section 5(b) would permit any person to file a complaint alleging that the State or political subdivision had failed to comply with provisions of H.R. 2783. If the Secretary finds there is sufficient evidence to warrant further investigation, an investigation into the matter would be required.

If it is found that lands granted to the State have reverted to the United States, the Secretary would be required to take all necessary steps to enforce the reversion and stop uses incompatible with this Act. The Secretary would be required to retain and manage any lands that reverted consistent with the purposes specified in section 4 of the Act.

Section 6 would assure that nothing in this Act would affect the jurisdiction and responsibility of the State with respect to fish and wildlife in the lands transferred to the State.

Finally, section 7 would amend two sections of the Michigan Public Lands Improvement Act of 1988 to conform to similar provisions of H.R. 2783. Section 3(d)(1) of Public Law 100–537 would be amended to require that the Secretary determine that claims are sufficiently meritorious as to be appropriate for exercise of the sale authority under that law. Sections 4(b)(1) and 4(b)(3)(A) would be amended to permit reconveyances by the State to the United States as well as to political subdivisions of the State.

In 1980, the Bureau of Land Management (BLM), as a result of its land use planning process, determined that most of the tracts of land in Arkansas, Iowa, Louisiana, Minnesota, Mississippi, and all States east of the Mississippi still under the jurisdiction of BLM are too small, scattered, difficult, and uneconomic to manage. In addition, many of the lands are subject to claims of title.

H.R. 2783 addresses the situation for Minnesota and would result in more efficient land use management, and enable completion of actions which would otherwise take years to complete.

In Minnesota, BLM currently manages 992 small, widely scattered parcels comprising 9,543 acres. Of these 848 parcels totaling approximately 7,800 acres have been identified by BLM as unclaimed by non-Federal interests and suitable for State management rather than continued Federal management. The majority of the tracts are unsurveyed islands of 0.1 to 75 acres. Approximately 20 percent of these parcels are thought to be encumbered by claims of title. Approximately 66 percent of the total number of tracts are unsurveyed. All existing disposal authorities require survey prior to transfer. The provisions of H.R. 2783 for conveying to a qualified trustee or for reimbursement to the United States for surveying the tracts would eliminate the problems related to surveying.

Since 1983 the Federal Government has transferred 71 parcels of public land to the State of Minnesota, or its subdivisions, under the authority of the R&PP Act. These parcels are limited to public purpose use and the patents contain a reverter clause that would

return the tracts to the United States if the provisions of the patent are violated.

Land transferred and granted under H.R. 2783 would be subject to a limitations on use, and would revert back to the United States if these provisions are violated. The State could reconvey the lands only to the United States or to a political subdivision of the State.

H.R. 2783 contains provisions by which previously issued R&PP leases would be deemed to have vested in the State under the provisions of H.R. 2783, and would exempt them from the regulations of BLM governing R&PP leases. This would put all land transfers to the State of Minnesota, those made in the past, and those made pursuant to H.R. 2783 under the same provisions.

Section 3 of H.R. 2783 permits sales of lands, in certain situations, to resolve title conflicts. The Bureau has attempted to resolve title conflicts through the use of the Color-of-Title Act and through sales at fair market value under FLPMA. These efforts have been very time consuming and expensive and, for the most part, have been unsuccessful. The only alternative for resolution of these claims has been special legislation on a case-by-case basis. Resolution of title conflicts by this method has been costly in both time and money. We believe that the sale authority in H.R. 2783 would allow resolution of the majority of title conflicts in Minnesota in an efficient manner that would be fair to the claimant and the general public.

While we support the purposes of H.R. 2783, we believe it must be amended to address these concerns:

1. Section 1(d)(1). The definition of "listed uplands and islands," section 1(d)(1), was amended at the request of the Bureau of Indian Affairs to exclude "any lands ceded to the United States by an Indian tribe pursuant to the Act of January 14, 1889 (25 Stat. 642)." The Milwaukee District Office of BLM has advised that approximately 5,000 acres on the list of uplands and islands are lands which are within the ceded area. The lands, however, were acquired from the Indians by the United States for use as flowage easements for those lands bordering on the Lake of the Woods, the Warroad River, and the Rainy River in Minnesota. Indian rights to these lands were extinguished through payment by the United States in 1938 (52 Stat. 215). The amended language under this definition acts to exclude the flowage easement lands from the purview of the Act even though the lands are public lands under the jurisdiction and management of BLM.

If the intent of the Act is to convey all those lands on the list, the Act must be amended to include those ceded Indian lands for which Indian title has been extinguished. We suggest that the phrase "for which Indian rights, interests, and title have not been extinguished or which were restored to the tribe by prior Secretarial Order." be added to the last sentence in section 1(d)(1).

2. Section 1(d)(1). Section 2(a) purports to grant to the State of Minnesota both surveyed and unsurveyed lands which appear on the list of uplands and islands. However, Section 1(d)(1) of the Act defines "listed uplands and islands" as "those vacant, unappropriated, and unreserved public lands located in the State of Minnesota." The definition of "listed uplands and islands" by its very terms is inconsistent with the granting language of the Act. The lands

being conveyed are represented as public lands but this determination can only be accomplished through the survey process. Once a survey has been conducted and the status of ownership has been determined, there can be a finding as to whether these lands are public domain lands.

We recommend that the phrase "vacant, unappropriated, and unreserved public," be stricken from section 1(d)(1) to avoid any inconsistency with the granting authority in section 2(a) of the Act. With these deletions, the interest and title of the United States, to surveyed as well as unsurveyed tracts of land, can be transferred or conveyed.

3. Section 1(d)(3). Unlike land sales provisions under other statutes dealing with public lands on which claims exist, the sales provision of the H.R. 2783 grants to the Secretary almost unlimited discretion. For example, the Color-of-Title Act requires that a tract of public land be held in good faith under claim or color of title. Section 1(d)(3) of H.R. 2783 in contrast, defines the term claim merely as "an assertion by a party other than the United States that such party has title to a parcel or tract of land." The conclusion drawn from the definition of "claim" is that there is not even a requirement on the part of the claimant to make a good faith assertion of right or title to the land. We recommend that the definition of "claim" be amended to require "a good faith assertion of right or title to the land." The Act, in our opinion, does not provide sufficient justification for such broad discretionary authority.

4. It is conceivable that there will be claims for lands not noted to the records on January 1, 1989, but which are subject to remedial statutes. We suggest that the date, January 1, 1989, be deleted from section 2(a) and (b), and replaced with the phrase "as of the date of passage of this Act".

5. Section 1 states that the purpose of the Act is to place under State management numerous "small scattered islands and upland tracts that are in Federal ownership and under the jurisdiction of the Bureau of Land Management," and which are not suitable for management by BLM or for inclusion in the National Park System, National Forest System, National Wildlife Refuge System, or other Federal conservation systems. If the purpose of the Act is to implement the broad findings set forth in seciton 1, we note that the list of lands subject to this Act contains only 10,000 acres. It is our understanding that there are more public lands in Minnesota than 10,000 acres, and we therefore question whether this Act is adequate to meet the stated purposes. Furthermore, after litigation resolving Indian ownership to lands in Minnesota has been concluded, it may reveal lands which qualify for conveyance to the State and which could be disposed of under this Act in the future. The passage of this Act prior to the conclusion of this litigation would prevent those lands from being conveyed under this authority.

We suggest that the existing text of section 2(a) be redesignated as paragraph (1), and the following language be added as paragraph (2) of that section:

> (2) In addition to those lands described in section 2(a)(1), any other lands which are not subject to any claim identified on the records of the Bureau of Land Management

and are determined by the Secretary to be suitable for management by the State in acccrdance with the terms and conditions of this Act, may be conveyed by the Secretary to the State.

6. Section 2(b) requires the Secretary to notify claimants of his authority to make such sales, to transfer to the State all such lands not purchsed within 10 years, and disables any "court of the United States" from enforcing any claim to such lands after that time. We believe that language should be added to quiet title to such lands after the passage of ten years and before the conveyance to the State, effectively preventing enforcement of claims in State courts.

We suggest that the last sentence of section 2(b) be amended to read:

> The right, title, and interest of the United States in and to any such listed uplands and islands not purchased by such claimant or claimants within ten years after the date of enactment of this Act shall be transferred by the Secretary to the State under and subject to this Act at the end of such ten years, and any claim to any such listed uplands and islands by any party other than the State shall be null and void and shall not thereafter be enforceable in any court of the United States.

7. Section 2(c)(2). Under this section of the Act, the Secretary would be directed to transfer to the State, lands which were leased or patented to entitles other than the State under the R&PP Act. The State should have the ability to accept or reject the lands before they are automatically transferred. This could be accomplished by adding the words "if the State requests conveyance, the Secretary shall transfer the surface estate to the State" at the end of paragraph (2) of this section.

8. Section 3(c)(2) deals with tracts that do not conform to an existing survey plat. An unsurveyed tract requires the applicant to reimburse the United States for the cost of preparing the plat of survey, but does not require reimbursement for any other aspect of the survey, including the field work. This provision is of questionable utility since the major cost in a survey is the field work and associated duties. Plat preparation is merely an incidental expense. We suggest that the first sentence of section 3(c)(2) be deleted, and the words "require the applicant to bear all costs of survey and plat preparation" be inserted in its place.

9. Section 4 conditions the use of the lands granted under the Act to public recreation purposes; protection of fish, wildlife, and plants; or the protection of scenic, historic, cultural, geologic and other resources. This section also requires that the State and/or any political subdivision of the State use the lands only for the specific purposes set out in that section.

Restrictions in the grant prevent the State from conveying to any entity other than a political subdivision of the State. Likewise, a political subdivision can only convey the lands back to the State. The Act would require BLM to monitor all conveyances by the

State or its grantees of lands granted under the Act, as well as the use of the lands, to determine compliance under the Act.

Noncompliance with any of the above mentioned restrictions would cause the lands to revert to the United States. Section 4 specifically provides that lands will revert to the United States if the State conveys to any entity other than a political subdivision; if any political subdivision conveys to any entity other than the State; or if any of the land granted is not used for the specific purpose set out under that section. Under any of these circumstances, all right, title, and interest in and to all of the lands granted or conveyed to the State, will revert to the United States. The Act is not explicit as to whether such reversion is automatic upon any act of noncompliance or whether BLM must notify the State of noncompliance or otherwise take steps to initiate a reversion of title to the United States. The potential problems associated with the reverter provision, and with determining the ownership status of lands on which unauthorized activities have occurred, are significant and should be considered prior to the passage of this Act.

The problems associated with a reverter provision of this type have received much attention under the R&PP Act. By virtue of the reverter provision in that Act the United States has been faced with the disposal of hazardous waste in sanitary landfills, and liability for the disposal under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901–6987) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601–9656). Under the R&PP Act, the reversionary provision exposes the United States to liability if any portion of the land is used for the disposal of hazardous waste. Land patented under the R&PP Act for specific use as a sanitary landfill reverts to the United States if the land is used for hazardous waste disposal. The United States is then liable for the hazardous waste as the landowner of the sanitary landfill.

The 1988 amendment to the R&PP Act (Public Law 100–648) sought to rectify the problem of landowner liability on the part of the United States under both Federal and State hazardous waste laws. Under the 1988 amendment lands may be specifically patented for the purpose of solid waste disposal or for any other purpose that might result in the release of hazardous waste. However, the patent must state that no portion of the lands used for such purposes will revert to the United States. We recommend the same provision be added to H.R. 2783, and suggest that the following new paragraph be added to section 4(b):

> (5)(A) If any lands granted or otherwise conveyed to the State or political subdivision of the State, shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601) or if they shall have been used for purposes that the Secretary finds might result in the disposal, placement or release of any hazardous substance, such land shall not under any circumstances revert to the United States.

10. Section 4(b). We suggest that section 4(b) of the Act also include a provision that would require the State to pay fair market

value for lands used for solid waste disposal or for any other purpose that might result in the release of hazardous wastes, and that would not revert to the United States under our suggested new section 4(b)(5), above. This would serve to discourage the State from using the lands for solid waste or hazardous waste disposal.

We suggest the following language be added as new section 4(b)(5)(B):

> (B) In the event lands granted or conveyed to the State or political subdivision of the State shall be used for purposes that the Secretary finds: (1) inconsistent with the purposes of this Act, and (2) might result in the disposal, placement or release of any hazardous substance, the State or political subdivision of the State shall be liable to pay the Secretary, on behalf of the United States, the fair market value of the land, including the value of any improvements thereon, as of the date of conversion of the land to the nonconforming purpose. Subject to appropriations, all amounts received by the Secretary under this subparagraph shall be retained by the Secretary and used for the management of public lands and shall remain available until expended.

11. Section 4(a) authorizes the Secretary to "convey the minerals together with the surface in accordance with section 209 of the Federal Land Policy and Management Act of 1976." If the intent of the Act is to prevent conveyance of any mineral interests to the State, the bill should specifically prohibit the State from acquiring minerals under section 209 of FLPMA. If the State acquires such mineral interest and subsequently attempts to mine or remove the minerals, the surface would have been used inconsistently with the purposes of this Act and would revert to the United States. Since the subsurface would have been acquired under section 209 of FLPMA, which has no such reversionary language, the State would continue to own the subsurface. We suggest section 4(a) include the statement, "The State is expressly prohibited from acquiring minerals under the Federal Land Policy and Management Act of 1976."

12. Section 5(a)(2). The notice and enforcement section of the Act creates several problems in light of the stated purpose of the Act to provide for better management of public lands. Sections 5(a)(2) (A) and (B) of the Act require the State to notify the Secretary of any conveyance or transfer by the State to a political subdivision. We recommend this section also require the transferee to provide notice to the Secretary of any conveyances. This ensures the Secretary will receive notice of all conveyances of these lands.

13. Section 5(a)(3) would require the Secretary to maintain in Washington, D.C., the land status records of transfers to the State. There is currently no office in Washington, D.C., with record keeping functions of this nature. We suggest the Act provide these records be kept in the same manner and location as currently established for public land records. This could be accomplished by substituting the following language for section 5(a)(3):

> Any conveyance or transfer of lands under this Act by the State or a political subdivision thereof shall be noted to the official records of the Bureau of Land Management and maintained in the appropriate office of the Bureau of Land Management.

14. Section 5(b)(1) provides that "any person may submit to the Secretary a complaint alleging that the State or a political subdivison thereof has failed to comply with the requirements of this Act." This provision indicates that any person submitting a complaint has a right to a response as well as a right to an administrative and judicial appeal. It is unnecessary to subject every complaint to an administrative review, especially in light of the other provisions under this section.

We recommend that section 5(b)(1) be deleted from the Act and section 5(b)(2) be renumbered section 5(b)(1) and be amended to read, "If noncompliance is brought to the Secretary's attention, and the Secretary determines that a complaint is supported by evidence sufficient to warrant further investigation, the Secretary shall investigate the matter." Subsequent paragraphs of section 5(b) should also be renumbered.

15. Section 5(b)(4) would require that lands revert to the United States under this Act be retained and managed in accordance with the stated purposes of the Act. This acts as a withdrawal of all those lands which revert to the United States because they can only be used for the specific purposes set out in section 4(b)(2). This is contrary to the disposal authority of BLM and will require BLM to retain and manage lands they find suitable for conveyance. We suggest that section 5(b)(4) be amended to read: "Any lands which may revert to the United States under this Act shall be managed by the Secretary in accordance with the Federal Land Policy and Management Act of 1976."

16. Section 7. To conform to our suggestions and the intent of section 7, we recommend that, to the extent the 1988 Michigan legislation is inconsistent with our suggested amendments, it be amended to make it consistent with our recommendations.

17. The words "Great Lakes" in section 2(a) cover too broad an area and are unnecessary. A more accurate description of the location of the lands would be "Lake Superior" rather than "Great Lakes."

In conclusion, we urge enactment of this legislation with the above referenced amendments in order to improve management of public lands in Minnesota.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JAMES M. HUGHES,
Deputy Assistant Secretary.

U.S. NUCLEAR REGULATORY COMMISSION,
Washington, DC, November 13, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your October 12, 1989 request, I am providing the Nuclear Regulatory Commission's (NRC's) views on legislation you may propose with respect to the licensing of uranium enrichment facilities. In particular you solicit the Commission's view as to whether the proposed legislation will accomplish your intent of providing for licensing of uranium enrichment facilities under Parts 40 and 70 rather than under Part 50 of Title 10 of the Code of Federal Regulations.

The NRC agrees with your view that it would be more appropriate to regulate uranium enrichment plants under 10 C.F.R. Parts 40 and 70 than under 10 C.F.R. Part 50. The primary safety hazard in an enrichment plant is that posed by the chemical toxicity of uranium hexafluoride and the resultant hydrogen fluoride formed from the reaction of uranium hexafluoride with moisture in air in the event of an accidental release.

The NRC has for many years regulated other chemical processing facilities, which also use uranium hexafluoride, under 10 C.F.R. Parts 40 and 70. NRC requirements in 10 C.F.R. Part 50 have been promulgated primarily for licensing of nuclear reactors, which are entirely different from uranium enrichment facilities in concept, complexity, and degree of risk.

Subsections (a), (b), (c), and (d) of the proposed legislation are identical to Sec. 114(d)(1)–(4) of S. 83 passed by the Senate on July 20, 1989. Under proposed subsection (a), a uranium enrichment facility will be removed from the statutory definition of "production facility" and therefore from licensing under Part 50. Such a facility will then be licensed and regulated under Subpart L of Part 2 and Parts 40 and 70 since the facility will possess source material and special nuclear material. The NRC believes that existing regulations in Parts 2, 40, and 70 will serve as an adequate regulatory framework for licensing enrichment facilities.

Subsection (e) of the proposed legislation was not included in S. 83. Section 274c(1) of the Atomic Energy Act prevents the Commission from entering into an agreement with a state under which the Commission would relinquish its authority over the construction or operation of any production or utilization facility. The proposed legislation preserves this prohibition with respect to uranium enrichment facilities. The effect of subsection (e) will be to prevent a state which enters into an agreement for the regulation of source material from sharing regulatory authority with the Commission over a uranium enrichment facility. The NRC believes that the potential significance of a uranium enrichment facility to the Nation's common defense and security and the desirability of avoiding dual regulation makes this provision appropriate.

We appreciate the opportunity to comment on this legislative proposal.

Sincerely,

KENNETH M. CARR.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the act, H.R. 2783, as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

PUBLIC LAW 100-537

AN ACT To improve the management of certain public lands in the State of Michigan

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS AND PURPOSES; DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the "Michigan Public Lands Improvement Act of 1988".

* * * * * * *

SEC. 3. RESOLUTION OF CLAIMS.

* * * * * * *

(d) APPLICABILITY AND PROCEDURE.—(1) This section shall apply only to tracts specified in section 2(b) of this Act and to other tracts of public lands in Michigan whose sale is requested by persons or entities asserting claims thereto[.], *and only if the Secretary has determined such claims to be sufficiently meritorious as to be appropriate for exercise of the Secretary's discretionary authority under this section.*

* * * * * * *

SEC. 4. RESERVATIONS AND CONDITIONS.

(a) MINERAL RESERVATION.—All lands granted by, and any patent or document of conveyance or other transfer issued pursuant to, this Act shall be subject to the reservations to the United States of all minerals in the lands granted, conveyed, or otherwise transferred, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that in the case of sales under section 3 of this Act the Secretary may convey the minerals together with the surface in accordance with section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(b) OTHER CONDITIONS.—(1) The lands granted or otherwise transferred to the State under this Act shall not be conveyed or otherwise transferred by the State to any person or entity other than *the United States or* a political subdivision of the State.

(2) The lands granted or otherwise transferred to the State under this Act shall be used only for purposes of—

(A) public recreation;

(B) protection of fish and wildlife (including habitat) and plants; or

(C) the protection of the scenic, scientific, historic, cultural, geologic, and other resources and values of such lands.

(3)(A) If the State attempts to convey or otherwise transfer title to any part of the lands granted or otherwise transferred to the State under this Act to any person or entity other than *the United States or* a political subdivision of the State, all right, title, and interest in and to all such lands so granted or otherwise transferred to the State, together with all improvements thereon, shall revert to the United States.

* * * * * * *

THE ATOMIC ENERGY ACT OF 1954

AN ACT for the development and control of atomic energy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ATOMIC ENERGY ACT OF 1954

TITLE 1—ATOMIC ENERGY

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

Sec. 1. Declaration.
Sec. 2. Findings
Sec. 3. Purpose

CHAPTER 2. DEFINITIONS

Sec. 11. Definitions.

CHAPTER 3. ORGANIZATION

Sec. 23. Office.
Sec. 24. General Manager, Deputy and Assistant General Managers.
Sec. 25. Divisions, Offices and Positions.
Sec. 27. Military Liaison Committee.
Sec. 28. Appointment of Army, Navy, or Air Force Officers.
Sec. 29. Advisory Committee on Reactor Safeguards.

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CHAPTER 2. DEFINITIONS

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions as used in this Act:

* * * * * * *

v. The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission; *Provided, however, That as the term used in Chapters 10 and 16 of this Act, other than with respect to export of a uranium enrichment production facility, it shall not include any equipment or device, or important compo-*

nent part especially designed therefor, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

* * * * * * *

CHAPTER 5. PRODUCTION OF SPECIAL NUCLEAR MATERIAL

SEC. 41. OWNERSHIP AND OPERATION OF PRODUCTION FACILITIES.—

a. OWNERSHIP OF PRODUCTION FACILITIES.—The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 31, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; or (2) are licensed by the Commission pursuant to [section 103 or 104] *this title.*

* * * * * * *

CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

b. establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessry or desirable to promote the common defense and security or to protect health or to minimize danger to life or property [.]*; in addition, the commission shall prescribe such regulations or orders as may be necessary or desirable to promote the nation's common defense and security with regard to control, ownership or possession of any equipment or device, or important component part especially designed therefor, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;*

* * * * * * *

CHAPTER 18. ENFORCEMENT

* * * * * * *

SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste storage facility licensed under this Act; [or]

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility; *or*

(4) any uranium enrichment facility licensed by the Commission; shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

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CHAPTER 19. MISCELLANEOUS

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SEC. 274. COOPERATION WITH STATES.—

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c. No agreememt entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

(1) the construction and operation of any production or utilization [facility;] *facility or any uranium enrichment facility;*

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11 e. (2). Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

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